

January 25, 2022

VIA EMAIL  
Matthew.Claucherty@wisconsin.gov

Matt Claucherty  
Phosphorus Implementation Coordinator  
Water Quality Bureau  
Department of Natural Resources  
PO Box 7921  
101 S. Webster Street  
Madison, WI 53707

RE: Comments of the Municipal Environmental Group – Wastewater Division  
Multi-Discharger Variance for Phosphorus Highest Attainable Condition Review

Mr. Claucherty:

We are submitting these comments on behalf of the Municipal Environmental Group–Wastewater Division (MEG Wastewater). MEG Wastewater is an organization of over 100 municipalities statewide who own and operate wastewater treatment plants. We represent facilities ranging in size from small sanitary districts to larger utilities. MEG Wastewater appreciates the opportunity to comment on the department’s highest attainable condition (“HAC”) review for the Multi-Discharger Variance for phosphorus (“MDV”).

MEG Wastewater supports the MDV option and appreciates the department’s thorough HAC review pursuant to Wis. Stat. § 283.16(3m). MEG agrees with the department’s conclusion that the MDV as implemented in Wisconsin meets the HAC. After reviewing this document, MEG has the following comments for the department’s consideration:

1. At a few points in this document, DNR discusses the limited number of dischargers that have been able to optimize such that they can achieve effluent phosphorus concentrations near or below the applicable target value. Given the small number of facilities in this category, MEG does not believe that the department’s policy concerning implementation of the MDV for these facilities impacts the HAC analysis. It remains true that the MDV as implemented across the state results in phosphorus reductions significantly greater than what would be achieved absent the MDV. MEG also questions the department’s statutory authority to require dischargers that are already meeting the target value to undertake a project to implement additional phosphorus reductions. Further, facilities must expend significant resources, often in the tens of thousands

0125221401

**Madison Office**

222 West Washington Avenue 608.256.0226  
P.O. Box 1784 888.655.4752  
Madison, Wisconsin Fax 608.259.2600  
53701-1784 www.staffordlaw.com

**Milwaukee Office**

1200 North Mayfair Road 414.982.2850  
Suite 430 888.655.4752  
Milwaukee, Wisconsin Fax 414.982.2889  
53226-3282 www.staffordlaw.com

of dollars, to implement projects that achieve even relatively small phosphorus reductions. MEG will continue to work with the department on the best options for addressing this scenario.

2. On page, 8 of the document, the department states that in a permittee's second permit term, the interim limit of 0.6 mg/L enumerated in Wis. Stat. § 283.16(6)(a)2. may apply, or the department may impose a lower effluent limit pursuant to § 283.16(7). However, Wis. Stat. § 283.16(6)(am) provides that interim limits for the first, second, or third permit terms may be less stringent where a permittee certifies that it cannot achieve compliance with the statutorily enumerated interim limit for that permit term without a major facility upgrade. MEG requests that the language in the document be revised to reflect that interim limits for the second permit term could also be less stringent pursuant to Wis. Stat. § 283.16(6)(am).
3. MEG requests that the department clarify the source of the first quote on page 12.
4. In the first paragraph of page 47, we believe there is a typo. The following sentence appears to be incomplete: "DNR is unable to include variance provisions in permits for years the 2027 MDV expiration date."
5. MEG supports the department's request for early re-approval of the MDV as expressed on page 47 of the document to avoid permitting confusion and to enable full use and benefit of the MDV in permits issued in 2022 and beyond. We agree with the department's conclusion that the MDV is an appropriate and viable tool to reduce point and nonpoint source phosphorus in waters of the state.

Thank you for consideration of these comments. MEG greatly appreciates the opportunity to participate in this process and welcomes further communication with the department.

Sincerely,

STAFFORD ROSENBAUM LLP



Vanessa D. Wishart

Paul G. Kent

VDW:mai